HON'BLE SRI JUSTICE B. PRAKASH RAO

AND

HON'BLE SRI JUSTICE G. BHAVANI PRASAD

–

W.P. No.525 of 2001 and
C.M.A. Nos. 2790 of 2000;
1593, 1747, 1748, 1749, 1750,
1751, 1752, 1770, 1771, 1772,
1773, 1775, 1777, 1778, 1779,
1780, 1781, 1784, 1789, 1792,
1793, 1794, 1800, 1813, 1906,
1910, 1918, 1964, 2065 of
2001; 713 of 2002; and
C.C. No.1206 of 2004

–

W.P. No.525 of 2001:

Between:
M/s. Gayathri Agro Industrial Power
Limited rep. through its Managing Director,
T. Devender Reddy, Hyderabad .. Petitioner

and

Transmission Corporation of Andhra Pradesh
Limited (AP TRANSCO) rep. through its
Managing Director and two others .. Respondents

C.M.A. No.2790 of 2000

Between:
Vamshi Industries Limited through
its Managing Director M. Kesava
Reddy, Hyderabad .. Appellant

and

A. P. Electricity Regulatory
Commission through its Secretary,
Hyderabad and two others .. Respondents

C.M.A. No.1593 of 2001

Between:
M/s. Deccan Cements Limited rep.
by its Managing Director, Hyderabad .. Appellant

and

APTRANSCO rep. by its Chairman
And Managing Director, Hyderabad .. Respondent

C.M.A. No.1747 of 2001

Between:
M/s. Goldcrest Power & Projects Limited,
rep. by its Director, Hyderabad .. Appellant

and

A. P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..
Respondents

C.M.A. No.1748 of 2001

Between:
M/s. Pioneer Energy Corporation Limited
Rep. by its Liaisoning Officer, Hyderabad .. Appellant

and

The A.P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..
Respondents

C.M.A. No.1749 of 2001

Between:
M/s. Kurnool Power Projects Ltd., rep.
by its Director (Commercial), Hyderabad .. Appellant

and

The A.P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..
Respondents

C.M.A. No.1750 of 2001

Between:
M/s. Inden Power International Limited
rep. by its Managing Director, Hyderabad .. Appellant

and

The A.P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..
Respondents

C.M.A. No.1751 of 2001

Between:
M/s. V.S.L. Power India Limited rep.
by its Director, Hyderabad .. Appellant

and

The A.P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..
Respondents

C.M.A. No.1752 of 2001

Between:
M/s. Vashista Power Limited rep. by its
Director, Hyderabad .. Appellant

and

The A.P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..

Respondents

C.M.A. No.1770 of 2001

Between:
Weizmann Ltd., rep. by its Executive,
Hyderabad Branch P.V. Laxminarayana .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1771 of 2001

Between:
RPP Ltd., rep. by its Managing Director,
Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1772 of 2001

Between:
Espar Pak Ltd., rep. by its Director,
Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1773 of 2001

Between:

Shivani Power Spinners Ltd., rep. by its
Director, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1775 of 2001

Between:
SKJ Power Projects Ltd., rep. by its
Joint Managing Director, Secunderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1777 of 2001

Between:
Tirumala Hydel Power Projects Pvt. Ltd., rep.
by its Director, Chilakaluripet, Guntur District .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1778 of 2001

Between:
Akshay Profiles (P) Ltd., rep. by its Managing
Director, Chilakaluripet, Guntur District .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1779 of 2001

Between:
Sri Jayalakshmi Powercorp Ltd., rep. by its
Accounts Officer, Guntur .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1780 of 2001

Between:
Sri Dhanalakshmi Cotton & Rice Mills Pvt. Ltd.
Rep. by its Managing Director, Chilakaluripeta .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1781 of 2001

Between:
PMC Power Pvt. Ltd. rep. by its Managing
Director, Secunderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1784 of 2001

Between:
Janapadu Hydro Power Projects Pvt. Ltd., rep. by its Executive Director, Guntur .. Appellant

and

Andhra Pradesh Electricity Regulatory Commission rep. by its Chairman, Hyderabad and another .. Respondents

C.M.A. No.1789 of 2001

Between:
M/s. Sagar Power Limited, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory Commission rep. by its Secretary, Hyderabad and three others .. Respondents

C.M.A. No.1792 of 2001

Between:
M/s. Tamilnadu Wind Farms Limited rep. by Its Authorised Signatory, Chennai .. Appellant

and

A. P. Electricity Regulatory Commission rep. by its Secretary, Hyderabad and two others .. Respondents

C.M.A. No.1793 of 2001

Between:
M/s. Wescare (India) Limited rep. by its Authorised Signatory, Chennai .. Appellant

and

A. P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..
Respondents

C.M.A. No.1794 of 2001

Between:
M/s RCI Power P. Ltd., rep. by its
Managing Director, Chennai .. Appellant

and

A. P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..
Respondents

C.M.A. No.1800 of 2001

Between:
M/s. Matrix Power (Pvt) Limited,
Hyderabad and others .. Appellants

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and three others ..
Respondents

C.M.A. No.1813 of 2001

Between:
M/s. Sudha Agro Oils and Chemical Industries
Limited, Samalkot rep. by its Managing Director .. Appellant

and

A. P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and two others ..

Respondents

C.M.A. No.1906 of 2001

Between:
S L S Power Limited rep. through
Its Managing Director, Nellore .. Appellant

and

A. P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and four others ..
Respondents

C.M.A. No.1910 of 2001

Between:
M/s. Sudalagunta Sugars Limited
rep. by its Managing Director, Tirupathi .. Appellant

and

A. P. Electricity Regulatory Commission,
Hyderabad and two others ..
Respondents

C.M.A. No.1918 of 2001

Between:
Renewable Energy Systems Ltd., rep. by
its Managing Director, Secunderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Chairman,
Hyderabad and another ..
Respondents

C.M.A. No.1964 of 2001

Between:
M/s. Gayathri Agro Industrial Power Limited

rep. through its Managing Director, Hyderabad .. Appellant

and

A. P. Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and three others ..
Respondents

C.M.A. No.2065 of 2001

Between:
Sri Vasavi Industries Ltd., Hyderbad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission rep. by its Secretary,
Hyderabad and three others ..
Respondents

C.M.A. No.713 of 2002

Between:
GMR Technologies & Industries
Limited, Hyderabad .. Appellant

and

Andhra Pradesh Electricity Regulatory
Commission, Hyderabad and three others ..
Respondents

C.C. No.1206 of 2004

Between:
M/s. Gayathri Agro Industrial Power Limited,
rep. by its Managing Director, Hyderabad .. Petitioner

and

Mrs. Rachel Chatterjee, Chairman &
Managing Director AP Transmission

Corporation of A.P. Limited having its
Office Vidyuth Soudha, Hyderabad
and another .. Respondents

DATE: 02-07-2007

COMMON ORDER: (per Hon'ble Sri Justice G. Bhavani Prasad)

As all the matters involve a common question, they are being heard and decided together at the request of the counsel for all the parties.

The orders of the Andhra Pradesh Electricity Regulatory Commission, Hyderabad in suo-motu proceedings initiated by it after notice to 141 power project developers of non-conventional energy development projects directing all the generators of the non-conventional energy to supply power generated by them to APTRANSCO and not to sell to third parties at the purchase price of Rs.2.25 per unit with 5% escalation per annum with 1994-95 as the base year, led to the challenge by the aggrieved developers in

this batch of cases.

The impugned orders of the Andhra Pradesh Electricity Regulatory Commission are the subject of the orders of interim suspension in all the matters which continued to be in force up to date.

Sri K. Gopal Choudary and other learned counsel for the developers relied on **R.V.K. Energy (P) Limited, Hyderabad v. A.P. Electricity Regulatory Commission and another**[1], wherein a Division Bench of this Court held:

> "It is a factual position that APTRANSCO at present is only a licensee, who supplies the energery (energy) to all the consumers. If the APTRANSCO is in debt trap, it cannot be made financially healthy at the cost of the appellants. There is also a covenant in the agreement between the power generating companies and the APTRANSCO that they would sell the surplus energy to the APTRANSCO only. To that extent, the APTRANSCO is made financially healthy by the private Power Generating Companies and the APTRANSCO has also entered into an agreement with the Power Generating Companies, which is called wheeling agreement, by which APTRANSCO is supported financially by Private Power Generating Companies as the private Power Generating Companies have no independent network and therefore, they are required to use the network of supplying electricity, which is established by APTRANSCO in the State. Thus, it will not be open for the Regulatory Commission to say that whatever the power generated by the private Power Generating Companies have to be sold only to the APTRANSCO",

and desired the impugned orders to be set aside.

Sri P. Sri Raghu Ram, learned Standing Counsel for Andhra

Pradesh Electricity Regulatory Commission and other learned counsel for the opposing parties contended that in view of Section 185 (3) of the Electricity Act, 2003 making the provisions of the Andhra Pradesh Electricity Reform Act, 1998 applicable only to the extent of absence of inconsistency with the provisions of the Electricity Act, 2003 and Section 42 of the Electricity Act, 2003 providing for open access, the orders of the Andhra Pradesh Electricity Regulatory Commission under challenge became redundant and infructuous and there is no need to go into the merits of the matter. It was also submitted that a number of developers/generators had, in fact, later entered into voluntary agreements with APTRANSCO regarding the sale of power generated by them.

The impugned orders were passed by the Andhra Pradesh Electricity Regulatory Commission in the background of the statutory environment as existing then in the light of the Andhra Pradesh Electricity Reform Act, 1998 read with such of the provisions of the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 that governed the situation then. However, the Indian Electricity Act, 1910 and the Electricity (Supply) Act, 1948 stood repealed by

Sub-Section (1) of Section 185 of the Electricity Act, 2003 save as otherwise provided by the later Act and the Andhra Pradesh Electricity Reform Act, 1998 itself shall apply only to the extent of its provisions not inconsistent with the provisions of the Electricity Act, 2003 in view of Section 185 (3) thereof. It is rather admitted that the impugned orders with reference to the statutory provisions then in force restricting the sale of energy produced by the non-conventional energy developers only to the APTRANSCO are

plainly inconsistent with the relevant provisions of the Electricity Act, 2003. Irrespective of the legality or justification of the orders at the time when they were passed, they cannot govern the field after the Electricity Act, 2003. As such, the merits of the rival contentions of the parties in these matters need no further probe in depth, as the impugned orders of the Andhra Pradesh Electricity Regulatory Commission have become redundant.

In the result, all the civil miscellaneous appeals, the writ petition and the contempt case are disposed of without costs as unnecessary and infructuous without prejudice to the continuance of the status-quo obtaining as on today concerning the sale of power or its price as enabled by the interim suspension of the impugned orders of the Andhra Pradesh Electricity Regulatory Commission during the pendency of these proceedings and also by the provisions of the Electricity Act, 2003 and further without prejudice to any agreements entered into by any of the generators of the non-conventional energy with APTRANSCO in the meanwhile.

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B. PRAKASH RAO, J

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G. BHAVANI PRASAD, J

Date: 02-07-2007

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[1] 2002 (3) ALD 196 (DB)